IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.264 of 2007
Date of decision:2.8.2007

Commissioner of Income Tax, Hissar .....Appellant

Versus

M/s H.P. Cotton Textile Mills Ltd.Hissar .....Respondent

CORAM:- Hon'ble Mr. Justice M.M. Kumar
Hon'ble Mr. Justice Ajay Kumar Mittal

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Present: Mr. Yogesh Putney, Advocate for the revenue.

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Order
M.M.Kumar, J

The Revenue has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act') challenging order dated 18.8.2006 passed by the Income Tax Appellate Tribunal,'C' Bench, New Delhi (for brevity 'the ITAT') in ITA No.3084/Del/2003 in respect of Assessment Year 1994-1995.

On the basis of order passed by the Commissioner under Section 263 in respect of Assessment Year 1996-97, the Assessing Officer did not accept the claim made by the assessee-respondent holding that the Commissioner had held in his order under Section 263 that the year 1986-87 was the first year of production. Therefore, deduction under Section 80 I of the Act for the Assessment Year 1994-95 was not available as it was only for a period of 8 years which had expired. However, on further appeal filed by the assessee, it was pointed out that the order passed by the Commissioner under Section 263 was subsequently cancelled by the Tribunal in its order dated 28.11.2002 in ITA No.1592/Del/01 both on technical grounds as well as on merits holding that the year 1986-87 was not the first year of production. In that regard the Tribunal had followed the

law laid down by the High Court of Delhi in the case of **CIT v. Food Specialities Limited,** (1985) 156 ITR 790, wherein it was held that the material date when an undertaking could be deemed to have commenced its production would be the date when commercial production has started. It has been found as a fact that in the year 1986-87 only trial production was started as noted by the Assessing Officer himself. As the year in relation to the year from which the benefits was to commence has been held to be the same under Section 80 I and 80 HH, the Tribunal held in favour of the assessee and against Revenue by observing as under :-

> "We have perused the records and considered the rival contention carefully. The disallowance u/s 80-I by the AO was based on the finding of the CIT in his order u/s 263 for assessment year 1996-97 that assessment year 1986-87 was the first year of production. But the said finding of CIT was not upheld by the Tribunal (supra). The Tribunal in para 19 of its order noted that the AO in the assessment for assessment year 1986-87 had observed that the assessee only commenced trial production in assessment year 1986-87 and the commercial production had not started in that year. The AO also noted in the sale had been set off against the expenditure incurred during the period of test runs and had been transferred to projects and pre-operative expenses. The returned income was declared nil which was accepted by the AO. The tribunal further noted that the finding of the AO that assessment year 1986-87 was not the first year of production had become final. The

> Tribunal had also noted that the first year of production been 1986-87, the assessee would have been entitled to various expenses which were of the nature of revenue and there would have been loss of Rs.40 lacs to the assessee which would have to be carried forward and set off against income of subsequent years. This would have gone in favour of the assessee. As the AO himself in 1986-87 admitted that it was not the first year of production and the order of CIT u/s 263 having been reversed by the Tribunal, we see no infirmity in the order of CIR (A) allowing the claim of the assessee. The order of CIT(A) is, therefore, upheld."

On the aforementioned premises the Revenue has claimed the following substantial question of law:-

> "On the facts & in the circumstances of the case, whether the Hon'ble ITAT was right in dismissing the Revenue's appeal upholding the order of the Ld.CIT (Appeals) allowing deduction U/s 80-I of the Income Tax without appreciating the fact that such deduction was claimed beyond the period of eight years i.e. for the Asstt. Year, relevant to the previous year in which the industrial undertaking started manufacturing and for each of the seven assessment years immediately succeeding the initial assessment year in contravention of provisions of Section 80-I(5) of the Act."

We have heard learned counsel at some length and find that no substantial question of law would emerge for determination of this Court

because once an order under Section 263 passed by the Commissioner in favour of the Revenue has been reversed by the Tribunal then the Revenue cannot claim that in respect of the same year different numbers of years are required to be counted for the purposes of granting benefit of Section 80 I of the Act. The principle of consistency as laid down by Hon'ble the Supreme Court in the case of **Radha Swami Satsang v. CIT** (1991) 193 ITR 321 and **Berger Paints India Ltd. v. CIT** (2004)266 ITR 99, would not permit the revenue to take a stand contrary to the one accepted by it as reflected in the order dated 28.11.2002 passed in ITA No.1592/Del/O1. In that order the Tribunal has held that the assessee-respondent has not commenced his production in the year 1986-87. That order has admittedly attained finality as the Revenue has not challenged it any further. Therefore, we find that no question of law much less substantial question of law would emerge for determination of this Court.

In view of the above, we are not inclined to admit the appeal and dismiss the same.

(M.M. Kumar)
Judge

August 2, 2007 **(Ajay Kumar Mittal)**
ps **Judge**